

HERBERT W. WINSTON

IBLA 81-860

Decided January 26, 1982

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application W 73668.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to commencement of the filing period.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

APPEARANCES: Herbert W. Winston, pro se; Harold J. Baer, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Herbert W. Winston has appealed the June 17, 1981, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneously filed oil and gas lease application W 73668 because its date did not reflect that it was signed within the filing period. The card was filed between November 3, 1980, and November 24, 1980--the filing period for the November drawing. Appellant's application however, was dated October 27, 1980.

The regulation, 43 CFR 3112.2-1(c), states in part, "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period."

Further, 43 CFR 3112.2-1(g) states, "The properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management."

[1] It is well established that a drawing entry card which is not properly dated in the space provided on the card must be rejected. Sorenson v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978), aff'd Walter M. Sorenson, 32 IBLA 345 (1977). In that case, the offeror had dated the card with the month and year, but had omitted the exact day. In a case virtually identical to the present case we also affirmed the rejection of an application predated prior to the filing period. Grace Grant, 58 IBLA 366 (1981). 1/ In Roy Flamm, 24 IBLA 10 (1976), we affirmed a rejection of a card which bore a date which was later than the date of the filing. We noted that postdating the card renders the signature ineffective at the time of its submission, thereby rendering ineffective the certification of all other statements made on the card. Id. at 11. Strict compliance with the regulations governing the drawing, 43 CFR Subpart 3112, is enforced to protect the rights of the second and third drawn qualified offerors. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

[2] In his statement of reasons, appellant asserts that he was misled by the filing service he employed; that they improperly instructed him on how to complete his drawing entry card and then proceeded to file that improperly completed card in the November 1980 drawing; and that the leasing service knew or should have known that his offer would have to be rejected and, consequently, the leasing service should not have filed the card but should have sent him new cards to complete.

When the Department published its regulations governing the simultaneous oil and gas leasing system, it responded to a comment which objected to the penalizing of an applicant for the activities of the applicant's filing service: "This comment was rejected because an application that is illegally filed should be rejected, whether filed by an applicant or by an applicant's agent. An applicant is responsible for the actions of the agent (filing service) he/she chooses to [employ]." 45 FR 35156, 35160 (May 23, 1980). To hold otherwise would prejudice the rights of those who submitted proper applications. See Ballard E. Spencer Trust, Inc., supra.

1/ But cf. Kathryn J. Eckles, 28 IBLA 390 (1977), which was decided prior to the promulgation of the current, controlling regulation, 43 CFR 3112.2-1(c), which became effective on June 16, 1980. 45 FR 35156 (May 23, 1980).

The appellant's final assertion was that the Secretary should be estopped from rejecting the card since the error in date should have been discovered by BLM prior to the drawing. This contention is without merit.

One of the benefits of the simultaneous filing system is that it avoids the necessity for full adjudication of the qualifications of all of the hundreds of thousands of such applications which are filed each year with BLM. For that reason, preadjudication is limited to six specific classes of unacceptable applications which may be excluded from the drawing. All other entries must be included in the drawing. See 43 CFR 3112.5; Margaret A. Ruggiero, 34 IBLA 171 (1978). The drawing only serves to establish the priority for consideration of the applications drawn, in substitution of the priority established by time of filing which applies to "regular" offers filed "over the counter." Since the law provides for issuance of a noncompetitive oil and gas lease to "the person first making application for the lease who is qualified," there must first be a determination of priority, followed by a determination of qualification. 30 U.S.C. § 226(c) (1976). As noted above, the predating of the application is disqualifying, and the rights of the next-drawn applicant attach eo instanti.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

